IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

EZEQUIEL MARTINEZ AS TRUSTEE

FOR 2227 MISSION CIRCLE LAND

TRUST,

Plaintiff,

V.

BANK OF AMERICA, N.A.,

Defendant.

S

Civil Action No. SA-12-CV-462-XR

S

S

BANK OF AMERICA, N.A.,

S

Defendant.

ORDER

On this day the Court considered Plaintiff's Motion for New Trial and for Rehearing (Doc. No. 30). Because Plaintiff's motion asks the Court to reconsider its ruling on Defendant's motion to dismiss and was filed within twenty-eight days after the entry of final judgment, the Court will construe Plaintiff's motion as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). *See Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012) (explaining that a motion asking the court to reconsider a prior ruling is evaluated as a motion to alter or amend judgment under Rule 59(e) if the motion was filed within twenty-eight days after the entry of judgment).

"A Rule 59(e) motion calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (internal quotation marks omitted). To be entitled to relief under Rule 59(e), a movant "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." *Schiller v. Physicians Res. Grp. Inc.*,

342 F.3d 563, 567 (5th Cir. 2003) (internal quotation marks omitted). "Relief under Rule 59(e)

is also appropriate when there has been an intervening change in the controlling law." Id.

Here, Plaintiff has failed to identify a manifest error of law or fact or present newly

discovered evidence demonstrating that the judgment that was entered in this case is incorrect.

Nor has Plaintiff shown that relief under Rule 59(e) is appropriate because of a change in

controlling case law. To the contrary, two recent Fifth Circuit opinions corroborate this

Court's entry of judgment in favor of Defendant. See Reinagel v. Deutsche Bank Nat'l Trust

Co., --- F.3d ---, 2013 WL 3480207 (5th Cir. July 11, 2013); Martins v. BAC Home Loans

Servicing, L.P., --- F.3d ---, 2013 WL 3213633 (5th Cir. June 26, 2013).

Accordingly, Plaintiff's Motion for New Trial and for Rehearing (Doc. No. 30) is

DENIED.

SIGNED this 19th day of July, 2013.

XAVIER RODRIGUEZ

UNITED STATES DISTRICT JUDGE